IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 11657 of 2007(K)

PETITIONER:

JOLLY JOSE,
THATTIL APPADAN HOUSE, OLLVER P.O.,
THRISSUR-630 306.

BY ADV. SRI.SHEEJO CHACKO
SRI.D.KRISHNANKUTTY PILLAI
SRI.M.N.MANOJ
SRI.PRASANTH K.DIVAKARAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF LOCAL FUND AUDIT, THIRUVANANTHAPURAM.

3. DIRECTOR OF PANCHAYATS, THIRUVANANTHAPURAM.

4. DEPUTY DIRECTOR OF PANCHAYATS, THRISSUR.

BY GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 11657/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : THE TRUE COPY OF THE SURCHARGE NOTICE DATED 16.8.2006 ISSUED BY THE DIRECTOR OF LOCAL FUND AUDIT.

EXT. P2 : TRUE COPY OF THE EXTRACT OF RELEVANT AUDIT OBJECTIONS ATTACHED ALONG WITH EXT.P1.

EXT. P3 : TRUE COPY OF THE OBJECTION DATED 18.9.2006 FILED BY THE PETITIONER BEFORE THE DIRECTOR OF LOCAL FUND AUDIT.

EXT. P4 : TRUE COPY OF THE RESOLUTION NO.7 DATED 22.4.2004 OF THE KODASSERY GRAMA PANCHAYAT.

EXT. P5 : TRUE COPY OF THE RELEVANT PORITION OF CHAPTER X-ESTIMATE OF KERALA PUBLIC WORKS DEPARTMENT MANUAL.

EXT. P6 : TRUE COPY OF THE SURCHARGE CERTIFICATE DATED 29.11.2006 17.12.2007 ISSUED BY THE DIRECTOR OF LOCAL FUND AUDIT.

EXT. P7 : TRUE COPY OF THE ORDER DATED 2.8.2006 IN W.P.(C) 20410 OF 2006 OF THIS HON'BLE COURT.

K.M.JOSEPH, J.

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WP.(C) No. 11657 of 2007

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Dated this the 26th day of July, 2007

JUDGMENT

Petitioner challenges Ext.P6 and also seeks a declaration that the respondents are not entitled to issue a surcharge certificate after a period of four years from the date on which the expenditure in question was incurred as contemplated under Section 215(9) of the Kerala Panchayat Raj Act, 1994. According to the petitioner, he is at present working as Senior Superintendent. Prior to that he was working as Panchayat Secretary. On 31.8.2006 he received a surcharge notice referred to in paragraph 65 of the report on Audit of accounts of Kodasserry Grama Panchayat for the year 1999-2000 and further intimating that a sum of Rs.14,819/- has been lost to the Panchayat on account of the excess payment made by the petitioner (Ext.P1). Ext.P2 is the relevant audit objections attached along with Ext.P1. Petitioner filed Ext.P3 objection. Panchayat Committee passed a resolution as Ext.P4 resolving that the socalled loss can be recovered from the concerned Engineers. Petitioner also relies on Ext.P5, which is page

163 of PWD Manual to show that technical sanction is granted by the competent authority in PWD on the basis of drawings, designs, specification and detailed estimate. According to him, petitioner has nothing to do with the expenses and steps are already initiated to recover amounts from persons responsible for losses to the Panchayat. But it is without properly considering Exts.P3 to P5, Ext.P6 is issued directing the petitioner to remit Rs.14,819/- surcharging the petitioner, who was the then Secretary and it is ordered that the amount shall be recovered in exercise of the powers conferred under sub-section(4) of Section 16 of the Kerala Local Fund Audit Act, 1994, it is contended.

2. Counter affidavit is filed by the respondents.

3. Petitioner relied on the proviso to Sub section (9) of Section 215 of the Panchayat Raj Act to contend that no surcharge shall be made after a period of four years from the date on which the expenditure in question was incurred. It is the case of the petitioner that Ext.P6 is not a speaking order and it is passed in a mechanical and casual manner and there is no negligence or misconduct on the part of the petitioner making or authorising such payment and payments were

effected on the basis of resolutions of the Panchayat. The petitioner was not heard in the matter.

4. I heard learned Government Pleader also. Section 215(9) of the Panchayat Raj Act reads as follows:

> "The auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising the incurring of, such expenditure and may charge against any person responsible therefor the amount of any deficiency, loss or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in very such case, certify the amount due from such person."

5. I feel that the matter has to be reconsidered taking note of the contentions of the petitioner and after affording an opportunity of hearing to him.

Accordingly Ext.P6 is quashed and the second respondent will take a decision in the matter after affording an opportunity of hearing to the petitioner also. It is open to the petitioner to raise among other

contentions that it is barred under the proviso to Section 215. It is open to the petitioner to rely on the judgment in W.P.(C) 5719 of 2006 also.

(K.M. JOSEPH, JUDGE)

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